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BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 5645

SENSITIVE

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3 In the Matter of)
4)
5 America's Foundation and Meredith G. Kelley, in her)
6 official capacity as treasurer)
7 Santorum 2006 and Gregg R. Melinson, in his official)
8 capacity as treasurer)
9

GENERAL COUNSEL'S REPORT #6

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12 **I. ACTIONS RECOMMENDED**

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18 3. Take no further action and close the file as to Santorum 2006 and Gregg R. Melinson,
19 in his official capacity as treasurer.
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21 **II. BACKGROUND**

22 This matter involves the receipt of in-kind corporate contributions by Santorum 2006,
23 former Senator Rick Santorum's authorized committee, and his leadership PAC, America's
24 Foundation, in the form of the payment of costs of fundraiser events in support of these
25 committees. These costs were paid by Highmark Inc. ("Highmark"), an insurance company
26 based in Pittsburgh, Pennsylvania, through its then-Vice President for Government Affairs, Bruce
27 Hironimus. Specifically, Highmark funds paid all the costs – totaling \$14,604.45 – of a
28 fundraiser golf tournament organized and hosted by Mr. Hironimus, held at the Country Club of
29 Hershey, Pennsylvania, that raised contributions for America's Foundation.¹ Highmark funds
30 were also used by Mr. Hironimus to pay the catering costs and the cost of wine –
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¹ Highmark funds were used to pay all the costs of two similar, earlier fundraiser golf tournaments in support of Santorum 2000, a committee which terminated prior to the generation of this matter

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1 totaling \$7,938.81 – for a fundraiser reception held at the home of Stan and Gretchen Rapp in
2 Hummelstown, Pennsylvania, that raised contributions for Santorum 2006. The candidate
3 attended both events.

4 On the basis of the available information indicating the possibility that the two
5 committees knowingly received the in-kind corporate contributions, and did not disclose those
6 contributions, the Commission found reason to believe that America's Foundation and Santorum
7 2006, and their respective treasurers in their official capacities, each violated 2 U.S.C. §§ 441b(a)
8 and 434(b)(3)(A).² See the related Factual and
9 Legal Analyses approved by the Commission on March 2, 2006.³

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III. ANALYSIS

A. America's Foundation

America's Foundation responded to the Commission's reason to believe findings by
acknowledging its failure to ascertain the amount of expenses associated with the golf
tournament and its failure to determine how those expenses were to be borne. See Attachment 1
at 4. America's Foundation stated that it reasonably relied upon Bruce Hironimus, who "failed"

² The treasurers who are the subject of the recommendations in the present Report were named on amended statements of organizations filed by America's Foundation and Santorum 2006 after the committees received notification of the Commission's reason to believe findings

³ The Commission has already conciliated with Highmark and with Bruce Hironimus. See MUR 5645 GCRs #2, #3 and #4 Those conciliation agreements cover not only Highmark's in-kind corporate contributions to America's Foundation and Santorum 2006 at issue here in GCR #6, but also Highmark's in-kind corporate contributions of the costs of the two earlier fundraiser golf tournaments in support of Santorum 2000

1 to inform the committee of the costs of the event,⁴ although the committee “does acknowledge
2 that it had an obligation to follow-up with Mr. Hironimus” to ascertain the costs. *See id.* In
3 addition, America’s Foundation asserted that this failure to follow up should be viewed in the
4 context that the venue of the golf tournament, the Country Club of Hershey, Pennsylvania, has
5 been used quite often for fundraising activities and so invoices from the Country Club are
6 routinely sent to the various Santorum-related committees that use its facilities; accordingly, a
7 missing invoice from the America’s Foundation event at issue held at the Country Club on
8 May 17, 2002, “apparently did not trigger any alarm” at the committee. *See id.* at 4-5.

9 America’s Foundation’s disclosure reports, however, indicate only two payments to the Country
10 Club of Hershey during the years 1999-2002 (the period of the America’s Foundation event at
11 issue and the two earlier events in support of Santorum 2000), on October 4, 2001 and
12 December 9, 2002. Further, neither Santorum 2000 nor Santorum 2006 disclosed any such
13 payments during this period.

14 America’s Foundation concluded its response by expressing “regret that this internal
15 administrative oversight occurred,” “pledg[ing] to the Commission that it will not reoccur,”
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17 We sought an explanation of the circumstances of America’s Foundation’s failure to pay
18 the costs of the fundraiser golf tournament from Nadine Maenza, the Santorum committees’
19 Finance Director who served as Bruce Hironimus’s contact for the event as well as for the earlier

⁴ America’s Foundation identified Megan Martin, who worked with Bruce Hironimus on the fundraiser golf tournament, as another individual who failed to inform the committee of the event costs. Ms. Martin performed her functions, such as drafting and mailing the invitations from Mr. Hironimus, as a paid employee of Keystone Strategies, Inc., the costs of her services were paid by Highmark. Keystone is a political fundraising subsidiary of Greenlee Partners LLC, a consulting firm that provides contract lobbying services to Highmark. *See GCR #5* at 7-8, 10.

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1 Santorum 2000 events. See GCR #5 at 3-8, 12. Ms. Maenza told us in an interview that she
2 ordinarily worked closely with hosts of fundraiser events, informing the host of the law and
3 keeping close tabs on the costs of the events. Ms. Maenza explained that she did not do so with
4 Bruce Hironimus because she was aware that he was working on the golf tournament fundraiser
5 with Keystone Strategies, Inc. ("Keystone"), a professional fundraising outfit, and so he did not
6 need her guidance. She assumed that Mr. Hironimus informed someone at America's
7 Foundation of the costs of the golf tournament, although she never followed up by asking him or
8 the committee about those costs. (Ms. Maenza made the same assumption for the two previous
9 Hironimus-hosted fundraiser golf tournaments in support of Santorum 2000.) Mr. Hironimus,
10 however, stated that he never discussed the costs of the event with anyone from the Santorum
11 committees, including Ms. Maenza.⁵

12 The evidence in this matter establishes the apparent violations:

13 America's Foundation, even without being made directly aware
14 of specific costs of the fundraiser golf tournament, was well aware that the event took place at a
15 country club and involved golfing, food and beverages, prizes and invitations, as the candidate
16 himself attended the event. America's Foundation should have been aware that a fundraiser
17 event of this nature would involve substantial expenses, yet they did not incur *any* costs

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1 regarding this event. The committee was aware, or should have been aware, that an outside party
2 paid the costs of the golf tournament; yet the committee did not disclose the receipt of any in-
3 kind contributions related to the event. *See* 2 U.S.C. § 434(b)(3)(A). Further, America's
4 Foundation was aware that Bruce Hironimus organized and hosted the golf tournament, but
5 disclosed no in-kind contributions from him.⁶ Neither did America's Foundation disclose the
6 receipt of in-kind contributions from Highmark, the actual source of the fundraiser costs. *See*
7 2 U.S.C. §§ 441b(a) and 434(b)(3)(A). Finally, America's Foundation itself acknowledged its
8 failure to ascertain the amount of expenses associated with the golf tournament and to determine
9 how those expenses were to be borne.

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12 **B. Santorum 2006**

13 Santorum 2006 presents a less compelling case than America's Foundation that it
14 knowingly received in-kind contributions. Santorum 2006 received a total of \$7,938.81 in in-
15 kind contributions from Highmark through Bruce Hironimus – in the form of catering costs of
16 \$7,568.40 and wine costs of \$370.41 – for a fundraiser reception held at the home of Stan and
17 Gretchen Rapp. The committee's disclosure reports do not contain disbursements related to the
18 catering or wine costs of the Rapp home reception. Nor did the committee report the receipt of
19 any in-kind contributions from Highmark or from Mr. Hironimus.

⁶ In-kind contributions from Mr. Hironimus in any event would not have been permissible contributions, as the costs at issue would have suggested significant excessive contributions on his part. The costs of the America's Foundation golf tournament exceeded \$14,000, far above the applicable contribution limit of \$5,000 per year. *See* 2 U.S.C. § 441a(a)(1)(C)

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1 In its response to the Commission's reason to believe findings, Santorum 2006 denied
2 liability, asserting that it "should not be penalized for the actions of others, of which it had no
3 knowledge and could not reasonably have been expected to know of the apparent violation(s)
4 committed by others." See Attachment 2 at 1. The committee stated that Santorum fundraiser
5 Nadine Maenza, who organized and attended the Rapp home reception, and Stan Rapp both
6 believed that the costs of the reception were handled in a manner that complied with the Act, and
7 had no reason to doubt the accuracy of their belief. See *id.* at 2. In support of Santorum 2006's
8 response, the committee provided sworn affidavits from Ms. Maenza and Mr. Rapp.
9 See Attachment 2 at 6-9.

10 The evidence, including our interviews of Ms. Maenza and Mr. Rapp as well as their
11 affidavits, indicates that shortly before the Rapp home reception, Bruce Hironimus approached
12 Stan Rapp and offered to pay the event costs. Mr. Rapp agreed, based on his assumption that
13 Mr. Hironimus would be using funds from a federal PAC⁷ or funds from a number of fellow
14 Highmark executives. Mr. Rapp says that he did not discuss with Mr. Hironimus the details of
15 the arrangement, and he was not aware that Mr. Hironimus used Highmark corporate funds to
16 pay for the catering and for the wine. Nor did Mr. Rapp advise Santorum 2006 of the payment
17 arrangement because he believed that Bruce Hironimus would inform the committee of the in-
18 kind contribution. Mr. Rapp says that Mr. Hironimus did not advise him that neither the federal
19 PAC nor Mr. Hironimus's fellow executives paid the costs. Finally, Mr. Rapp avers that he is

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⁷ Highmark's PAC (the corporation's separate segregated fund, Highmark Health PAC of Highmark Inc.) could have paid the costs of the catering and wine. Up until the time of the Rapp home reception in June 2003, the PAC had contributed \$1,000 to Santorum 2006, leaving an available \$9,000 contribution limit for the election cycle. See 2 U.S.C. § 441a(a)(2)(A) (multicandidate committee contribution limit of \$5,000 to candidate committees per election)

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1 familiar with the options for payment of expenses associated with a fundraising event for a
2 federal candidate and he believed that the arrangements here were completely legal. *See* Rapp
3 Affidavit ¶ 7 (Attachment 2 at 6).

4 As for Nadine Maenza, she says that she did not speak to Mr. Rapp about the costs of the
5 reception and she was not aware of the catering and wine costs or that they were paid by
6 Highmark, although Santorum 2006 did pay for the printing and mailing of the invitations and
7 for the photographer.⁸ Ms. Maenza avers that as a professional fundraising expert with more
8 than 20 years experience, she can normally gauge the approximate costs of events. Nothing
9 about the Rapp home reception suggested to her the \$7,568.40 amount of the catering invoice,
10 which surprised her. In fact, her observation of the event led her to conclude that the costs did
11 not exceed the \$2,000 exemption allowable to Stan and Gretchen Rapp for an event in their
12 home. *See* 2 U.S.C. § 431(8)(B)(ii) (exempts from the definition of "contribution" up to \$1,000
13 in food and beverage costs voluntarily provided by an individual to a candidate for an event held
14 on the individual's residential premises). Accordingly, Ms. Maenza says, she did not inquire
15 regarding the costs or ask to see an invoice. She also stated that she did not do so here because
16 Stan Rapp and his staff, including Megan Martin, who helped organize the Rapp home reception,
17 are well-versed in the law.⁹

18 To buttress her opinion, Nadine Maenza states in her affidavit that she organized a similar
19 fundraiser for Santorum 2006 held recently at Stan Rapp's office, the cost of which was only
20 \$1,700. *See* Maenza Affidavit ¶ 7 (Attachment 2 at 8). The related invoice provided to us,

⁸ *See, e.g.*, Attachment 2 at 29-30 (printing invoice addressed to Santorum 2006 and Santorum 2006 check made to the order of the printer).

⁹ Mr. Rapp is a partner at Greenlee Partners LLC. *See* footnote 4, *supra*

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1 however, was in the amount of \$2,190.70, not \$1,700, and covered an event for 60 guests, fewer
2 than the 75 guests indicated on the invoice for the Rapp home reception.¹⁰ See Attachment 2
3 at 27. While these differences make for an imperfect comparison between the two events, it is
4 apparent that the catering cost of the recent event was substantially less than the \$7,568.40
5 catering cost of the Rapp home reception.

6 As for Bruce Hironimus and Megan Martin, they told us that they never discussed the
7 costs of the Rapp home reception with Nadine Maenza or anyone else from the Santorum
8 committee.

9 In view of all the evidence, we do not recommend further action with respect to the
10 allegation that Santorum 2006 knowingly received in-kind contributions in connection with the
11 Rapp home reception. One significant factor is Nadine Maenza's sworn statement setting forth
12 her belief that the catering appeared to cost \$2,000 or less and thus could be covered under the
13 Rapps' home event exemption. See 2 U.S.C. § 431(8)(B)(ii). Although a substantial difference
14 exists between the \$7,568.40 catering cost and the Rapps' \$2,000 exemption, Ms. Maenza bases
15 her belief on her observation of the Rapp home event and her extensive experience including the
16 recent, assertedly similar and far less expensive fundraiser event at Stan Rapp's office.

17 A second factor is the comparatively limited involvement of Bruce Hironimus. In
18 contrast to his role as organizer and host of the fundraiser golf tournament in support of
19 America's Foundation, he neither organized nor hosted the Rapp home reception. With

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¹⁰ According to the invoice, the reception at Mr. Rapp's office took place on April 24, 2006. The invoice was not attached to Nadine Maenza's affidavit, as indicated in her affidavit, but was later provided upon our request. Along with the invoice, Santorum 2006 provided a copy of its check that paid the invoice. See Attachment 2 at 28

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1 Mr. Hironimus's less visible role, Santorum 2006 can more credibly assert that it had no
2 knowledge and could not have been expected to know that he paid the costs, using Highmark
3 funds.

4 A third factor is that Santorum 2006 paid some of the costs of the Rapp home reception,
5 namely, for the invitations and the photographer. Taken together with Nadine Maenza's belief
6 that the Rapps permissibly paid the catering costs, it appears that Santorum 2006 believed it had
7 properly accounted for the costs of the Rapp home event. By contrast, America's Foundation did
8 not account for the costs of the golf tournament, which took place at a country club, not a private
9 home, and Highmark paid all the costs of the event. In that case, no home event exemption was
10 available there (none is asserted) and the entire costs, including the country club costs as well as
11 the invitations, necessarily constituted a contribution.

12 Thus, the evidence does not suggest that Santorum 2006 had a reason to think that an
13 outside party paid the costs, and so there was no knowing acceptance of a contribution from any
14 third party. Accordingly, we recommend that the Commission take no further action and close
15 the file as to Santorum 2006 and Gregg R. Melinson, in his official capacity as treasurer. We
16 will, however, instruct Santorum 2006 to disgorge the amount of the Highmark in-kind
17 contributions – \$7,938.81 – to the U.S. Treasury.¹¹

18 **IV.**

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¹¹ Highmark has waived any right to the refund of its contributions in this matter. See Highmark Inc. Conciliation Agreement, Paragraph X (MUR 5645 GCR #4 Attachment 1 at 6)

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V. RECOMMENDATIONS

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3. Take no further action and close the file as to Santorum 2006 and Gregg R. Melinson, in his official capacity as treasurer.

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4. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Date: 2/2/07

BY: Cynthia E. Tompkins
Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Mark Allen
Attorney

Attachments:

1. America's Foundation response to reason to believe finding
2. Santorum 2006 response to reason to believe finding

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